

Assembly Bill No. 1935

Passed the Assembly August 29, 2006

Chief Clerk of the Assembly

Passed the Senate August 28, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 765.5, 7604, and 7711 of, and to add Sections 1202.7, 7663, and 7711.1 to, the Public Utilities Code, relating to railroads, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1935, Bermudez. Railroads: maintenance and safety.

(1) The existing Federal Railroad Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and security are required to be nationally uniform, but authorizes a state to adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

Existing law requires the Public Utilities Commission to establish, by regulation, a minimum inspection standard to ensure the inspection of railroad locomotives, equipment, and facilities

located in class I railroad yards in California not less frequently than every 180 days, and the inspection of all branch and main line track not less frequently than every 12 months.

This bill would require that the inspection of railroad locomotives, equipment, and facilities occur not less frequently than every 120 days, and commencing July 1, 2008, in addition to those minimum inspections, that the commission conduct focused inspections, as prescribed, of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary.

(2) Existing law establishes the safety division of the commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail.

This bill would require that existing automatic grade-crossing safety signal equipment that was installed within the previous 10 years that is removed pursuant to a specified provision of federal law, that the commission determines will meet the same performance criteria and inspection standards as new equipment, be made available for use at certain other crossings.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because this provision of the bill would be a part of the act, the bill would impose a state-mandated local program by creating a new crime.

(3) Pursuant to the FRSA, the Secretary of Transportation has adopted regulations to provide for safety at public highway-rail grade crossings, as defined, by requiring use of a locomotive horn, as defined, except in quiet zones, as defined, established and maintained in accordance with those regulations. These regulations expressly preempt any state law, rule, regulation, or order governing the sounding of locomotive horns at public highway-rail grade crossings, but are not intended to affect, nor do they preempt, any state law, rule, regulation, or order governing the sounding of locomotive horns at private highway-rail grade crossings, as defined, or pedestrian crossings, as defined.

Existing state law requires locomotives to be equipped with a bell of specified weight or equivalent sound-producing capability and requires that the bell be sounded from a locomotive engine at least 1,320 feet before the intersection of the railroad and a street, road, or highway with certain exceptions. Existing law imposes a civil fine of \$100 on a railroad corporation that violates these provisions.

This bill would delete existing state law relative to the equipping and sounding of locomotive bells and would instead require that one of several specified audible warning devices be sounded at any public crossing in accordance with the regulations adopted by the Secretary of Transportation, except in a quiet zone. The bill would additionally require that one of the specified audible warning devices be sounded at all rail crossings not subject to the requirements of the regulations adopted by the Secretary of Transportation, except in a quiet zone, in the same manner and circumstances as required at a public crossing. The bill would not restrict the sounding of one of the specified audible warning devices in an emergency, or as otherwise authorized by federal regulation. The bill would impose a civil penalty of \$2,500 for violation of these provisions.

(4) Existing law requires the commission to require every railroad corporation operating in this state to develop, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with that office, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify the office, the department, and the public safety agencies, through a communication to the warning center of the office, if there is a runaway train or other uncontrolled train movement threatening public safety, in accordance with the developed communications protocol.

This bill would require the California Highway Patrol or a designated local public safety agency that responds to a railroad accident to report the accident to the Office of Emergency Services. By placing additional reporting requirements upon

local public safety agencies, the bill would impose a state-mandated local program.

(5) Existing law requires the commission to annually report to the Legislature on sites on railroad lines in the state that it finds to be hazardous, including a list of all commodities transported on railroad lines that could pose a hazard to the public or the environment in the event of a train derailment or other accident, a description of the quantities of these commodities, and the locations and routes that these materials are transported, and a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous 5 years.

This bill would require the annual report to include a list of the root causes and significant contributing factors of all train accidents or derailments investigated.

The bill would require the commission to collect and analyze “near-miss” data generated from incidents occurring at railroad crossings and along the rail right-of-way, including data relative to runaway trains or any other uncontrolled train movements that threaten public health and safety reported to the commission pursuant to the bill.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 765.5 of the Public Utilities Code is amended to read:

765.5. (a) The purpose of this section is to provide that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state.

(b) The commission shall dedicate sufficient resources necessary to adequately carry out the State Participation Program for the regulation of rail transportation of hazardous materials as authorized by the Hazardous Material Transportation Uniform Safety Act of 1990 (P.L. 101-615).

(c) On or before July 1, 1992, the commission shall hire a minimum of six additional rail inspectors who are or shall become federally certified, consisting of three additional motive power and equipment inspectors, two signal inspectors, and one operating practices inspector, for the purpose of enforcing compliance by railroads operating in this state with state and federal safety regulations.

(d) On or before July 1, 1992, the commission shall establish, by regulation, a minimum inspection standard to ensure, at the time of inspection, that railroad locomotives, equipment, and facilities located in class I railroad yards in California will be inspected not less frequently than every 120 days, and inspection of all branch and main line track not less frequently than every 12 months.

(e) Commencing July 1, 2008, in addition to the minimum inspections undertaken pursuant to subdivision (d), the commission shall conduct focused inspections of railroad yards and track, either in coordination with the Federal Railroad Administration, or as the commission determines to be necessary. The focused inspection program shall target railroad yards and track that pose the greatest safety risk, based on inspection data, accident history, and rail traffic density.

SEC. 2. Section 1202.7 is added to the Public Utilities Code, to read:

1202.7. Whenever existing automatic grade-crossing safety signal equipment that was installed within the previous 10 years is planned for removal due to upgrade or closure projects undertaken pursuant to Section 130 of Title 23 of the United States Code, and the commission determines that it will meet the same performance criteria and inspection standards as new equipment and therefore be safe to use, the signal equipment shall be made available to the following:

(a) With the consent of the participating railroad, to a state agency designated by the commission, for storage and potential use at a railroad crossing currently nominated by the commission for funding to eliminate hazards of railway-highway crossings pursuant to Section 130 of Title 23 of the United States Code.

(b) To other railroads for use at other railway-highway crossings within the state.

SEC. 3. Section 7604 of the Public Utilities Code is amended to read:

7604. (a) (1) Except as provided in paragraph (3), a bell, siren, horn, whistle, or similar audible warning device shall be sounded at any public crossing in accordance with Section 222.21 of Title 49 of the Code of Federal Regulations.

(2) Except as provided in paragraph (3), a bell, siren, horn, whistle, or similar audible warning device shall be sounded, consistent with paragraph (1), at all rail crossings not subject to the requirements of Subpart B (commencing with Section 222.21) of Part 222 of Title 49 of the Code of Federal Regulations.

(3) A bell, siren, horn, whistle, or similar audible warning device shall not be sounded in those areas established as quiet zones pursuant to Subpart C (commencing with Section 222.33) of Part 222 of Title 49 of the Code of Federal Regulations.

(4) This section does not restrict the use of a bell, siren, horn, whistle, or similar audible warning device during an emergency or other situation authorized in Section 222.23 of Title 49 of the Code of Federal Regulations.

(b) Any railroad corporation violating this section shall be subject to a penalty of two thousand five hundred dollars (\$2,500) for every violation. The penalty may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with.

SEC. 4. Section 7663 is added to the Public Utilities Code, to read:

7663. Whenever the Department of the California Highway Patrol or a designated local public safety agency responds to a

railroad accident, the accident shall be reported to the Office of Emergency Services.

SEC. 5. Section 7711 of the Public Utilities Code is amended to read:

7711. The commission shall annually report to the Legislature, on or before July 1, on sites on railroad lines in the state it finds to be hazardous. The report shall include, but not be limited to, information on all of the following:

(a) A list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years. The list shall describe the nature and probable causes of the accidents, if known, and shall indicate whether the accidents occurred at or near sites that the commission has determined, pursuant to subdivision (b), pose a local safety hazard.

(b) A list of all railroad sites in the state that the commission determines, pursuant to Section 20106 of Title 49 of the United States Code, pose a local safety hazard. The commission may submit in the annual report the list of railroad sites submitted in the immediate prior year annual report, and may amend or revise that list from the immediate prior year as necessary. Factors that the commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

- (1) The severity of grade and curve of track.
- (2) The value of special skills of train operators in negotiating the particular segment of railroad line.
- (3) The value of special railroad equipment in negotiating the particular segment of railroad line.
- (4) The types of commodities transported on or near the particular segment of railroad line.
- (5) The hazard posed by the release of the commodity into the environment.
- (6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.
- (7) The proximity of railroad activity to human activity or sensitive environmental areas.
- (8) A list of the root causes and significant contributing factors of all train accidents or derailments investigated.

(c) In determining which railroad sites pose a local safety hazard pursuant to subdivision (b), the commission shall consider the history of accidents at or near the sites. The commission shall not limit its determination to sites at which accidents have already occurred, but shall identify potentially hazardous sites based on the criteria enumerated in subdivision (b) and all other criteria that the commission determines influence railroad safety. The commission shall also consider whether any local safety hazards at railroad sites have been eliminated or sufficiently remediated to warrant removal of the site from the list required under subdivision (b).

SEC. 6. Section 7711.1 is added to the Public Utilities Code, to read:

7711.1. The commission shall collect and analyze near-miss data generated from incidents occurring at railroad crossings and along the rail right-of-way. For purposes of this section, “near-miss” includes a runaway train or any other uncontrolled train movement that threatens public health and safety reported to the commission pursuant to Section 7661.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Five train derailments have occurred in less than two years, three of them occurring in the span of one month. This is part of a disturbing trend across California. The number of train

accidents has increased exponentially since 1997. In 1997, there were 105 train accidents. By 2003, there were 187. In 2005 the state was projected to have 228 train accidents. Because there is a need to resolve this problem now, in order to keep Californians safe, it is necessary that this act go into immediate effect.

Approved _____, 2006

Governor